

WEST VIRGINIA INFORMATONAL LETTER

NO. 84

JULY, 1992

**TO: All Insurance Companies Licensed to Transact Automobile Insurance
in West Virginia and Insurance Trade Associations**

On June 29, 1992, the West Virginia Supreme Court of Appeals rendered a highly significant decision in Russell v. State Auto. Mut. Insur. Co. The Court held that an anti-stacking provision is valid "in an automobile insurance policy where a single insurance policy is issued by a single insurer and contains an underinsured endorsement even though the policy covers two or more vehicles."

In reviewing Chapter 33 Article 6 Section 31(b) of the West Virginia Code, the Court reached several conclusions: 1) the provision applies to each automobile policy issued in the state; 2) the statute doesn't require that the amount of underinsured coverage be increased because there are multiple vehicles listed under the policy; and 3) the statutes language doesn't restrict an insurer from limiting liability coverage up to the limits of bodily injury liability coverage when multiple vehicles are listed on the same insurance policy.

This decision does not disturb the Courts findings in State Auto. Mut. Ins. Co. v. Youler 396 S.E.2d 737 (1990). Youler applies where the insured has underinsured coverage under two or more policies. In this instance, the insured is paying full premiums under each policy. The Court reasons that where the full premium rate is paid under each policy for underinsured coverage, the stacking of multiple policies is valid. The Russell case addresses a single policy in which the insured received a multi-car discount on underinsured coverage for multiple vehicles listed on the policy. Due to this multi-car discount, the Court states that the insured bargains for only one policy and only one underinsured motorist coverage per policy.

Following the July 20, 1990, decision in Youler, a percentage of companies were granted substantial rate increases for underinsured coverage. With the outcome of Russell, it is essential that these rate increases be re-examined and re-adjusted where substantiated.

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Therefore, all companies who have received rate increases for underinsured motorist coverage subsequent to the Youler decision are directed to resubmit their rate filings to the Insurance Commissioners Office for review and determination.

Enclosed and noted as "Attachment I" is a form to be completed and returned to this office by an appointed designee of each licensed company which writes automobile insurance in this State. With this information, this agency will have written certification from each writer as to whether or not the company has received underinsured rate increases since July 1990.

Within the last two years, companies have taken one of two approaches in marketing automobile policies in West Virginia. Some companies are marketing a policy with rate discounts for multiple vehicles listed on a policy. Other companies are marketing a policy which solely covers one vehicle per policy. To ensure that we have a comprehensive record indicating the type of policy sold by each licensed company in this State, the enclosed form noted as "Attachment II" is to be completed by an authorized representative from each company.

Also to be completed on "Attachment II" is the name, position title and telephone number for the company employee who serves as the contact person for any information or any inquiries regarding the company's automobile rating structure.

Submission of all information directed above is to be filed with this office no later than Tuesday September 15, 1992.

Please direct all submissions and any questions regarding this matter to Jerry Gladwell, Director of Rates and Forms Division, Insurance Commissioners Office, 2019 Washington Street East, P.O. Box 50540, Charleston, WV 25305-0504.

Hanley C. Clark
Insurance Commissioner

Enclosures (2)

Company Name _____

Company Address _____

Please check one of the spaces provided below:

_____ My company has taken one or more rate increases for underinsured motorist insurance since July 20, 1990.

_____ My company has not taken any rate increases for underinsured motorist insurance since July 20, 1990.

Authorized Representative

Company Name _____

Company Address _____

1. Which of the following methods does your company use when it issues underinsured motorist insurance which covers multiple vehicles?

_____ One policy is issued which covers 2 or more vehicles and gives a multi-car discount.

_____ Each vehicle is covered under a separate policy.

_____ Other (please explain)

2. Please provide the name of the contact person in this company whom we may contact for any information regarding the companys automobile rating structure.

Name: _____

Position: _____

Phone No: _____

Authorized Representative